

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

-against-

**ROBERT J. MUELLER, DEEPROOT FUNDS
LLC (a/k/a dprr Fund, LLC), AND POLICY
SERVICES INC.,**

Defendants,

-and-

**DEEPROOT TECH LLC, DEEPROOT
PINBALL LLC, DEEPROOT STUDIOS LLC,
DEEPROOT SPORTS & ENTERTAINMENT
LLC, DEEPROOT RE 12621 SILICON DR LLC,
AND ROBERT J. MUELLER, JEFFREY L.
MUELLER, AND BELINDA G. BREEN, AS CO-
TRUSTEES OF THE MB HALE OHANA
REVOCABLE TRUST,**

Relief Defendants.

Civil Action No.: 5:21-cv-785-XR

**ASCENTIUM CAPITAL LLC'S
OPPOSED MOTION FOR RELIEF FROM PRELIMINARY INJUNCTION**

Ascentium Capital LLC (“Ascentium”), a creditor and party-in-interest in the above styled case, hereby moves this Court pursuant to Rule 60 of the Federal Rules of Civil Procedure for relief from the preliminary injunction issued on September 23, 2021 (the “Preliminary Injunction”), to allow Ascentium to pursue a judgment against Defendant Robert J. Mueller (“Mueller”) for amounts owed to Ascentium.

I. BACKGROUND FACTS

1. Ascentium is a commercial lender that provides equipment and technology financing solutions for companies of all sizes.

2. On November 19, 2021 Ascentium filed Cause No. 2021-CI-24114, *Ascentium Capital LLC v. Policy Services, Inc. and Robert Mueller*, in the 57th Judicial District Court of Bexar County, Texas to enforce and collect sums due and owing from Policy Services¹ and Mueller, as guarantor, under Equipment Finance Agreement No. 2412988 (the “Finance Agreement”) through a breach of contract claim.²

3. Upon information and belief, Mueller is Policy Services’ owner and president. Mueller executed the Finance Agreement on Policy Services’ behalf on or about December 26, 2019.³ Additionally, Mueller executed the Finance Agreement as guarantor in his individual capacity.⁴

4. Pursuant to the terms of the Finance Agreement, Ascentium made a loan for Policy Services to purchase certain equipment from a vendor, Energi Pros. Pursuant to the terms of the Finance Agreement, Policy Services agreed to repay the loan from Ascentium in accordance with a payment schedule, consisting of 24 consecutive monthly payments of \$6,952.44, beginning in the month of January 2020. The Finance Agreement incorporates a guaranty executed by Mueller, whereby he unconditionally guaranteed Policy Services’ payment and performance.

5. Policy Services defaulted on the Finance Agreement by its failure to timely make payments due Ascentium in and after July 2021; thus, Ascentium gave notice of its election to

¹ On December 9, 2021, Policy Services, Inc. filed a voluntary Chapter 7 petition for relief under Title 11 of the United States Code, in the United States Bankruptcy Court for the Western District of Texas, Case No. 21-51513.

² **Exhibit A:** Plaintiff’s Original Petition in Cause No. 2021-CI-24114.

³ **Exhibit B:** Finance Agreement.

⁴ *Id.*

accelerate the Finance Agreement by letter dated October 4, 2021.⁵ The debt remained unpaid, thus necessitating Ascentium filing suit against Policy Services and Mueller.

6. On September 23, 2021, this Court issued a Preliminary Injunction, ordering that creditors or claimants against any of the Defendants, including Mueller, “are enjoined and prohibited from taking any action to interfere with the taking control, possession, destruction, conversion, transfer, or management of the assets of the Defendants or Relief Defendants, including, but not limited to, the filing of any lawsuits, liens, or encumbrances, or bankruptcy cases to impact the property and assets subject to this Order, except where such party seeks permission to do so by filing a motion in this Court.” Pursuant to this Court’s order, Ascentium stopped pursuing its collection efforts in Cause No. 2021-CI-24114 against Mueller.

II. ARGUMENTS & AUTHORITIES

7. This Court should grant Ascentium relief from the Preliminary Injunction to avoid unduly prejudicing Ascentium in its efforts to obtain a judgment against Robert Mueller. Rule 60 of the Federal Rules of Civil Procedure states that on a motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for any reason that justifies relief. Fed. R. Civ. P. 60(b)(6).

8. Ascentium is not asking this Court for relief from the Preliminary Injunction to collect on the debt owed by Mueller at this time. Instead, Ascentium is simply asking for relief to continue to pursue a judgment against him. Therefore, this relief does not prejudice any of the parties to this case through its conclusion by reducing the assets held in Mueller’s accounts. However, failure to provide the requested relief would severely prejudice Ascentium by not allowing Ascentium to pursue judgment against Mueller for months or even years. Therefore,

⁵ **Exhibit C:** Acceleration Letter.

because no other parties to this case will be prejudiced, and to avoid imposing undue prejudice on Ascentium's efforts to obtain a judgment against Mueller, this court should grant Ascentium relief from the Preliminary Injunction and allow Ascentium to pursue judgment against Mueller for its breach of contract claim.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Ascentium Capital LLC respectfully requests this Court enter an order relieving Ascentium from the Preliminary Injunction so that it may pursue and obtain a judgment against Robert Mueller for its breach of contract claim in Cause No. 2021-CI-24114, *Ascentium Capital LLC v. Policy Services, Inc. and Robert Mueller*, in the 57th Judicial District Court of Bexar County, Texas.

Respectfully submitted,

By: /s/ Judson Mahan
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CERTIFICATE OF CONFERENCE

I, Judson Mahan, conferred with counsel for the Plaintiff and Defendant Robert J. Mueller in this suit with respect to this Motion on March 15, 2023, both of whom indicated they are opposed to the relief sought herein.

/s/ Judson K. Mahan
Judson K. Mahan

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2023, a true and correct copy of the foregoing was served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

/s/ Judson Mahan

Judson Mahan